

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim on the System Committee of the Brotherhood
(GL-10391) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Kansas City, Kansas, when it improperly removed W. R. Hauk from service on November 1, 1988; and

(b) W. R. Hauk shall now be returned to Carrier's service and paid for loss of wages and benefits commencing November 1, 1988."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The operative facts of this case are reasonably clear. The Claimant, a clerical employee with some twenty (20) years of seniority with the Carrier made a written request on September 8, 1988, for six (6) unpaid personal leave days. This request was approved by the Carrier and Claimant began the six (6) day unpaid leave on September 12, 1988. On the basis of the six leave days and the intervening rest days, Claimant was scheduled to return to his third shift (11 P.M.-7 A.M.) assignment on September 22, 1988. At 7:30 P.M. on September 22, 1988, Claimant contacted the Carrier and marked off sick. He eventually returned to his assignment on September 26, 1988. The Claimant was off for a total of fourteen (14) calendar days from the time he had previously performed service.

There is in effect on this Carrier a set of Safety and General Rules for all employees. One of these Rules, 1004, deals with DUTY - REPORTING OR ABSENCE. Rule 1004 reads as follows:

"Employees must report for duty at the designated time and place. They must devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority. Employees must not be absent from duty without proper authority. Except for scheduled vacation period, authorized absence in excess of ten (10) calendar days must be authorized by formal leave of absence, unless current agreement differs."

By Notice dated October 3, 1988, the Claimant was notified to attend a Hearing on October 12, 1988, ". . . concerning your alleged absence from duty without approved leave of absence, Form 1516 Std., from September 12, 1988, through and including September 25, 1988." The Hearing was postponed to, and held on November 1, 1988. The Claimant did not attend the Hearing and it was held in absentia. The Claimant's Representative was present and did participate in the Hearing. At the conclusion of the Hearing, the Claimant was notified by letter dated November 1, 1988, that he was ". . . removed from service effective immediately for violation of Rule 1004," The Claim for reinstatement as outlined above has been handled in the usual manner on the property and has now come to this Board for final adjudication.

The Board has reviewed the record as developed in this case and has considered all of the arguments and contentions as advanced by the parties.

There is no question, but that Claimant knew, or should have known, the requirements of Rule 1004. There is no question relative to the fact that the Claimant was absent from his assignment for more than ten (10) calendar days. However, there is also no question that the Claimant did properly request the six (6) days unpaid leave and that he did properly report off sick in a timely fashion on September 22, 1988. Neither of these actions was challenged by Carrier at the time as being improper in any way. Neither of these requests for absence was denied by the Carrier at the time such requests were made.

While the Board concurs with the contention and position that unauthorized absences from duty are serious offenses which a Carrier need not tolerate and which can, and often do, eventuate in the termination of repeat offenders; this case does not fall into that category. Here there was approval either given or implied by Carrier in two separate situations - the six (6) days unpaid leave request and the "sick until report" notification. The fact that Claimant did not think to tie these two situations together and realize that he would thereby exceed the ten (10) calendar day limit specified in Rule 1004, and therefore need a formal leave of absence, may indeed have put him in violation of that Rule. This Board recognizes that such a violation warrants some form of discipline in order that the Rule will have meaning and effect.

However, the Board cannot agree that the dismissal of a 20-year employee for such a violation is consistent with the objectives and purposes of formal discipline. Rather, it is our conclusion that the discipline's purposes will be served and the integrity of the Rule will be preserved by returning the Claimant to service with seniority and all other rights unimpaired, but without pay for the time he has been out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.